

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSEPH BLAIN,) Case No. SACV 08-1375-RGK(RC)
)
 Petitioner,) OPINION AND ORDER ON
) PETITION FOR WRIT OF HABEAS CORPUS
 vs.)
)
 J. HARTLEY, WARDEN A.S.P.)
 STATE OF CALIFORNIA,)
)
 Respondent.)
 _____)

On December 3, 2008, petitioner Joseph Blain, a person in state custody proceeding pro se, filed a habeas corpus petition under 28 U.S.C. § 2254 challenging his convictions and sentence in Orange County Superior Court case no. 05CF1616 on seven counts of violating California Penal Code § 288, as well as a motion for protective petition and stay of proceedings.¹ The petitioner challenges his sentence on the sole ground of "ineffective assistance of counsel," and states the facts supporting this ground as "failure to investigate

¹ The Court takes judicial notice under Fed. R. Evid. 201 that the California Supreme Court on November 12, 2008, denied petitioner's request for habeas corpus relief, making his motion for a stay moot.

1 for penalty phase" -- without any further explanation of the facts
2 and without citation to any supporting cases to illuminate the facts.
3 Thus, on December 15, 2008, this Court dismissed the petition with
4 leave to amend pursuant to Fed. R. Civ. P. 12(e) and Rule 2 of the
5 Rules Governing Section 2254 Cases in the United States District
6 Courts, see James v. Borg, 24 F.3d 20, 26 (9th Cir.) ("Conclusory
7 allegations which are not supported by a statement of specific facts
8 do not warrant habeas relief."), cert. denied, 513 U.S. 935 (1994);
9 Jones v. Gomez, 66 F.3d 199, 204-05 & n.1 (9th Cir. 1995), cert.
10 denied, 517 U.S. 1143 (1996), and afforded petitioner 30 days in which
11 to file an amended petition. However, petitioner has not filed an
12 amended petition.²

13 14 DISCUSSION

15 Rule 1 of the Rules Governing Section 2254 Cases in the United
16 States District Courts ("Rules") provides that these Rules govern the
17 procedures in the federal courts on an application under 28 U.S.C. §
18 2254 by a person in custody pursuant to a judgment of a state court.
19 28 U.S.C. § 2254, Rule 1. Rule 2(c) requires that the petition
20 shall specify all grounds for relief, as well as the facts supporting
21 each ground. Id. Here, the petitioner has failed to set forth the
22 facts supporting his claim. Rather than immediately summarily
23 dismissing the habeas petition based on its deficiency, the Court
24 instead dismissed it with leave to amend, and ordered petitioner to

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26
27 ² Rather, petitioner filed another motion for a stay of
28 proceedings. Without a cognizable petition, however, there is no
proceeding to stay; thus, petitioner's most recent request for a
stay is denied.

1 file an amended petition within thirty (30) days. The Court
2 admonished petitioner, however, that "[f]ailure to timely file the
3 amended petition may result in the recommendation that this action be
4 dismissed." Although more than thirty days have passed, petitioner
5 has not filed an amended petition.

6
7 Rule 4 provides that "[i]f it plainly appears from the petition
8 and any attached exhibits that the petitioner is not entitled to
9 relief in the district court, the judge must dismiss the petition and
10 direct the clerk to notify the petitioner." 28 foll. U.S.C. § 2254,
11 Rule 4. Since the habeas petition is clearly defective on its face,
12 it should be summarily dismissed without prejudice.

13
14 **ORDER**

15 IT IS ORDERED that the habeas petition shall be SUMMARILY
16 DISMISSED without prejudice.

17
18 IT IS FURTHER ORDERED that the Clerk shall notify petitioner of
19 the dismissal.

20
21 DATE: January 12, 2009



R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

22
23 PRESENTED BY:

24 DATE: January 8, 2009

25 /S/ Rosalyn M. Chapman
26 ROSALYN M. CHAPMAN
27 UNITED STATES MAGISTRATE JUDGE